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FILED
DISTRICT COURT OF GUAM

FEB 07 2008 *chs*

JEANNE G. QUINATA
Clerk of Court

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15 Attorneys for Specially-Appearing Defendant
16 Navigators Insurance Co.,
17 dba Navigators Protection & Indemnity

18 IN THE DISTRICT COURT OF GUAM

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 vs.

22 MARWAN SHIPPING & TRADING CO.,
23 FIVE SEAS SHIPPING CO., LLC, and S.J.
24 GARGRAVE SYNDICATE 2724, *in*
25 *personam*,

26 Defendants.

27 AND CROSS-CLAIMS,
28 COUNTERCLAIMS, AND CLAIM IN
INTERVENTION

Civil Case No.: 06-00011

**SPECIALLY-APPEARING DEFENDANT
NAVIGATORS INSURANCE COMPANY'S
OPPOSITION TO S.J. GARGRAVE
SYNDICATE 2724'S MOTION FOR
DEFAULT JUDGMENT ON THE GROUNDS
THAT IT IS PREMATURE**

Judge: Honorable Frances Tydingco-Gatewood

29 S.J. GARGRAVE SYNDICATE 2724's ("Gargrave") FRCP 55(b)(2) Motion for Default
30 Judgment should be denied because it is premature. Currently pending before the Court is
31 NAVIGATORS INSURANCE COMPANY ("Navigators") Motion to Set Aside the Default on the
32 grounds that Navigators was never served with Gargrave's First Amended Third-Party Complaint.
33 Gargrave's motion is premature because the Court has not determined if it has jurisdiction over
34 Navigators to enter a Default in the first place.

SPECIALLY-APPEARING OPPOSITION TO
GARGRAVE'S MOTION FOR DEFAULT JUDGMENT
Civ. Case No. 06-00011; Our File No. 2900.81

ORIGINAL

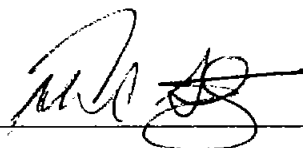
1 It is axiomatic that before the Court can consider Gargrave's motion for default judgment, it
2 must first resolve the issue of whether Navigators was ever served with the summons and complaint.
3 "A person is not bound by a judgment in litigation to which he or she has not been properly made a
4 party by service of process." Mason v. Genisco Technology Corp., 960 F.2d 849, 851 (9th Cir. 1992)
5 (citing Yniguez v. Arizona, 939 F.2d 727, 735 (9th Cir. 1991)). On February 5, 2008, Navigators filed
6 its Motion to Set Aside Default on the grounds that Gargrave's failure to serve Navigators deprives the
7 Court of "jurisdiction to adjudicate the matters as to" Navigators. Di Vecchio v. Gimbel Bros., 40
8 FRD 311, 314 (W.D. PA 1966). Navigators has appeared specially to contest Gargrave's purported
9 service of process. Until the Court resolves this issue, it is premature to consider Gargrave's Motion
10 for Default Judgment. Therefore, Navigators respectfully requests that the Court first resolve the
11 dispute of whether Navigators was served before considering Gargrave's Motion for Default
12 Judgment.
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14
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16 DATED: February 7, 2008

Respectfully submitted,

Stanley L. Gibson
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BLAIR STERLING JOHNSON
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21 By 

22 Thomas C. Sterling
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